

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Adoption of Rules to)
Implement Substitute Senate Bill 162.) Case No. 10-1010-TP-ORD

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**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

In order to ensure that residential telephone consumers receive adequate service at reasonable rates, the Office of the Ohio Consumers' Counsel ("OCC") files this Application for Rehearing of the Entry issued by the Public Utilities Commission of Ohio ("Commission" or "PUCO") in this proceeding on September 15, 2010. OCC is authorized to file this Application for Rehearing under R.C. 4903.10 and Ohio Adm. Code 4901-1-35.

The Entry set forth the timeframes in which incumbent local exchange carriers ("ILECs") in Ohio may raise the rates they charge customers for basic local exchange service ("basic service"). The Entry was prompted by restrictions on basic service rate increases in Substitute Senate Bill 162, which became effective on September 13, 2010.

The Entry should be modified for the following reasons:

1. The Commission stated that Frontier would be able to increase basic service rates in 21 of its exchanges beginning on September 13, 2010, even though Frontier is precluded from increasing its basic service rates until it fulfills the broadband deployment commitment in the Stipulation approved by the Commission in the Frontier-Verizon acquisition case.
2. The Commission did not order AT&T Ohio to notify customers that the basic service rate increase AT&T Ohio

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planned for October 3, 2010 would not take effect on that date.

The grounds for this Application for Rehearing are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On June 13, 2010, Governor Strickland signed into law Substitute Senate Bill 162 (“Sub. S.B. 162”), which revised many of the statutes and rescinded many of the PUCO’s rules concerning the provision of telecommunications service in Ohio.¹ Sub. S.B. 162, among other things, changed the definition of “basic local exchange service” to specifically include small business customers² and specified the restrictions on ILECs’ ability to increase basic service rates after the legislation’s effective date.³

Sub. S.B. 162 became effective on September 13, 2010. On September 15, 2010, the PUCO issued the Entry in which the Commission stated that new R.C. 4927.12(C) was “self-effectuating...”⁴ For this reason, and “to avoid any possible confusion,”⁵ the Commission outlined three pricing scenarios for basic service rate increases applicable to the ILECs in Ohio. The scenarios were based on whether an ILEC had already been granted basic service alternative regulation in an exchange and whether the ILEC had

¹ In this memorandum in support of OCC’s Application for Rehearing, the statutory provisions adopted in Sub. S.B. 162 will be cited as “new R.C. ____.”

² New R.C. 4927.01(A).

³ New R.C. 4927.12(C).

⁴ Entry at 2.

⁵ Id.

increased basic service rates in an exchange under basic service alternative regulation during the past 12 months.⁶ The Commission also communicated “the earliest date price increases may occur in each category.”⁷

The Entry, however, has created some confusion. First, the Entry seemingly allows Frontier to increase basic service rates in 21 exchanges, even though Frontier is barred from doing so until it fulfills a broadband commitment under the Stipulation approved by the Commission in the Frontier-Verizon merger proceeding.⁸ This apparent oversight by the Commission could affect the rights of parties to the Stipulation. The Commission should modify the Entry to make clear that Frontier cannot increase basic service rates in any exchange until it fulfills the broadband commitment.

Second, the Appendix to the Entry states that the earliest date AT&T Ohio can increase basic service rates in 20 of its largest exchanges is January 4, 2011, even though AT&T Ohio informed customers in those exchanges that their basic rates would increase on October 3, 2010. In order to ensure that customers are properly informed, the Commission should require AT&T to notify customers that the increase announced for October 3 would not occur on that date.

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order, “any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect

⁶ Id. at 2-3.

⁷ Id. at 2.

⁸ *In the Matter of the Joint Application of Frontier Communications Corporation, New Communications Holdings, Inc. and Verizon Communications Inc. for Consent and Approval of a Change in Control*, Case No. 09-454-TP-ACO (“09-454”), Stipulation (December 7, 2009) (“Stipulation”) at 6.

to any matters determined in the proceeding.” OCC, as member of Ohioans Protecting Telephone Consumers, filed comments regarding the proposed rules for implementing Sub. S.B. 162 on August 30, 2010.

R.C. 4903.10 requires that an application for rehearing must be “in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.” In addition, Ohio Adm. Code 4901-1-35(A) states: “An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing.”

In considering an application for rehearing, R.C. 4903.10 provides that “the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear.” The statute also provides: “If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.” As shown herein, the statutory standard for modifying the Entry is met here.

III. ARGUMENT

A. The Commission Stated That Frontier Would Be Able To Increase Basic Service Rates In 21 Of Its Exchanges Beginning On September 13, 2010, Even Though Frontier Is Precluded From Increasing Its Basic Service Rates Until It Fulfills The Broadband Deployment Commitment In The Stipulation Approved By The Commission In The Frontier-Verizon Acquisition Case.

New R.C. 4927.12(C)(2) allows ILECs that have received the ability to raise basic service rates, but have not done so in the past 12 months, to raise basic service rates at any time during the 12-month period beginning September 13, 2010. The Entry stated

that this category includes 21 Frontier exchanges that were granted basic service alternative regulation while the exchanges were part of Verizon territory in Ohio.⁹

But under the Stipulation in the Frontier-Verizon merger case, Frontier agreed not to raise stand-alone basic service rates until it meets the broadband commitment contained in the Stipulation.¹⁰ Further, the Stipulation recognized that the legislation, which was pending at the time, could affect the Commission's jurisdiction over ILECs in Ohio.¹¹ Frontier nevertheless agreed to abide by all the agreements and commitments in the Stipulation "unless specifically mandated otherwise by law...." New R.C. 4927.12(C)(2) *allows*, but does not *mandate*, rate increases for basic service. Thus, the authority to increase the rates customers pay for basic service allowed by new R.C. 4927.12(C)(2) will not apply to Frontier until it meets the broadband commitment in the Stipulation.

It was apparently an oversight for the Commission to include the 21 Frontier exchanges among those that now may be subject to a basic service rate increase under new R.C. 4927.12(C)(2). Nevertheless, the statement may adversely affect the public interest benefits of the Stipulation. The language in the Entry could eliminate one of the essential consumer benefits that served as the basis for OCC's agreement to the Stipulation.

The Commission should enforce stipulations that it deems to be in the public interest and, for that reason, it approves.¹² The Entry's reference to the 21 Frontier

⁹ Entry at 2.

¹⁰ Stipulation at 6.

¹¹ *Id.* at 10.

¹² The Commission approved the Stipulation in an Opinion and Order issued on February 11, 2010 in 09-454.

exchanges, however, is contrary to the Commission's enforcement role regarding Stipulations.¹³ Although OCC is certain that Frontier will abide by the Stipulation, the Entry should be consistent with the Stipulation in order to avoid confusion. The Commission should modify the Entry to reflect that Frontier cannot raise basic service rates in the 21 exchanges until it has met the broadband commitment in the Stipulation.

B. The Commission Did Not Order AT&T Ohio To Notify Customers That The Basic Service Rate Increase AT&T Ohio Planned For October 3, 2010, Would Not Take Effect On That Date.

The Appendix to the Entry lists 20 AT&T Ohio exchanges that are subject to the restriction in new R.C. 4927.12(C)(1).¹⁴ Under that restriction, if an ILEC raised basic service rates in an exchange during the 12 months before September 13, 2010, the ILEC may not raise basic service rates in that exchange until the first anniversary date of the rate increase.

The appendix notes that AT&T Ohio increased basic service rates in the 20 exchanges on January 4, 2010,¹⁵ and thus is prohibited by new R.C. 4927.12(C)(1) from increasing basic rates in those exchanges until January 4, 2011. Nevertheless, AT&T Ohio announced in news articles that it plans to raise residential basic service rates in the 20 exchanges.¹⁶ AT&T Ohio also notified residential customers in those exchanges,

¹³ The Entry also unlawfully modified the Order in 09-454. See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 300, 309; 2006 Ohio 5789; 856 N.E.2d 213 (2006) (Commission cannot change an order without record evidence to support its decision and without setting for the basis for its decision).

¹⁴ See Entry at 2.

¹⁵ AT&T Ohio raised rates for business basic access lines with touchtone service by 75 cents in access area B and by \$1.25 in access area C, and rates for business basic access lines without touchtone service by \$1.25 in access area B and by 50 cents in access area C. See Case No. 90-5032-TP-TRF, Tariff revision (January 4, 2010), Exhibit D.

¹⁶ See "AT&T phone rate to rise \$1.25," Columbus Dispatch, July 24, 2010, (available at <http://www.dispatch.com/live/content/business/stories/2010/07/24/att-phone-rate-to-rise-1-25.html?sid=101>).

through a bill notice, that their basic service rates would increase by \$1.25 on October 3, 2010.

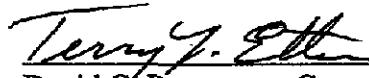
The Entry prevents this October rate increase, however. In order to further the Entry's stated purpose of avoiding confusion regarding the proposed rate increase, the Commission should require AT&T Ohio to notify customers that there will be no residential basic service rate increase in October, as AT&T Ohio originally announced.

IV. CONCLUSION

For the reasons stated herein, the Commission should grant OCC rehearing and modify the Order as discussed herein.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

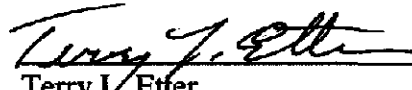


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Application for Rehearing by the Office of the Ohio Consumers' Counsel* was served by first class United States Mail, postage prepaid, to the persons listed below, on this 15th day of October 2010.



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